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Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Comprehensive proposal on appropriate incentives to retain staff of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee has considered the report of the Secretary-General on the comprehensive proposal on appropriate incentives to retain staff of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia (A/62/681). The Committee also had before it the report of the International Civil Service Commission for 2007 (A/62/30 and Corr.1). During its consideration of the reports, the Committee met with representatives of the Tribunals and the Secretary-General, who provided additional information and clarification.

2. The report of the Secretary-General, submitted pursuant to General Assembly resolution 61/274, provides updated human resources data on the staffing situation in the Tribunals, information on the drawdown plans for each Tribunal, justification for the possible payment of a retention incentive and the related legal aspects of such payments, non-monetary incentives and measures and three options for the calculation of the amount of the retention incentive. Background on the proposal for

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granting incentives to retain staff until the work of the Tribunals is completed is provided in paragraphs 1 to 8 of the report.

3. As indicated in paragraph 12 of the report, the approved budgets for the biennium 2008-2009 reflect the redeployment of posts from trial to appellate support work and the phasing out of 349 posts (33 per cent) in the International Criminal Tribunal for Rwanda and 258 posts (26 per cent) in the International Tribunal for the Former Yugoslavia as a result of the anticipated reduction of first-instance trial activity in the second half of 2009. The Tribunals project a further significant reduction of posts, commencing in early 2010, when it is anticipated that all trials will be in the appeals stage, except for three pending cases in the International Tribunal for the Former Yugoslavia, which are due to be completed in 2010. Upon enquiry, the Advisory Committee was informed that the International Tribunal for the Former Yugoslavia envisaged a downsizing of its staff even if the indicted persons still at large were captured and additional trials ensued. Furthermore, the Committee recalls that the trial schedules and current budgets do not into take into account resource requirements for the trials of those fugitives (see A/62/578, para. 10).

4. The Tribunals have initiated a number of non-monetary incentives intended to retain staff until their posts are no longer required. They are aimed at broadening career options for staff when they leave the Tribunals, improving working conditions and assisting staff in dealing with host country residency and administrative issues. The specific measures, which are described in paragraphs 20 to 29 of the report of the Secretary-General, include, training opportunities; paid and unpaid study leave; flexible working arrangements; short-term assignments within the United Nations system in order to broaden skills and experience; and career counselling and support for a transition to a new career or a new location. In addition, the Tribunals will continue to actively explore opportunities for the placement of Tribunal staff at other United Nations entities, as well as in Europe and Africa, and in local markets.

5. Upon enquiry, the Advisory Committee was informed that a total of 7 staff members of the International Criminal Tribunal for Rwanda and 22 staff members of the International Tribunal for the Former Yugoslavia had been on temporary assignment during 2007, mainly in peacekeeping operations, special political missions and the Special Court for Sierra Leone. Of the 22 International Tribunal for the Former Yugoslavia staff having benefited from that measure, 3 did not return to the Tribunal.

6. The Advisory Committee notes that contracts for all regular posts were extended until either August or October 2009, after consultation with Headquarters. As a result of this measure, combined with the effects of the various non-monetary incentives that have been put into place, the number of staff departures has been manageable, according to the Tribunals. Current staff turnover rates in the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia are 11 and 14 per cent respectively, and are projected to increase to 20 per cent as the completion dates draw near. In addition to the measures outlined above, the Tribunals are exploring possibilities for the secondment of staff from Member States, the United Nations and other common system organizations on temporary assignment during the final stages of the Tribunals' operations, as it will be difficult to recruit highly qualified personnel for short periods.

7. The Advisory Committee commends the Tribunals for measures taken to retain staff and to plan for possible staff shortages as the completion dates approach. It requests the Tribunals to continue to explore further options for non-monetary incentives for staff to remain at the Tribunals until their posts are no longer required, such as their treatment as internal candidates for recruitment and selection. In this connection, the Committee draws attention to the recommendation of the International Civil Service Commission that the reporting date for any new assignment of Tribunal staff offered appointments in another common system organization should be set to coincide with the completion of the staff member's work with the Tribunal (A/62/30, para. 21 (d)). The Committee also recommends that the General Assembly request the Secretary-General to further support the efforts of the Tribunals and encourages all United Nations offices and peacekeeping operations to cooperate with the Tribunals with regard to career and training opportunities for their staff.

8. The General Assembly requested the Secretary-General to identify the key positions where the problem of retention could arise (resolution 61/274, para. 9 (a)). The Advisory Committee notes that the Tribunals have not identified the specific key positions that are deemed essential for the effective functioning of the proceedings. The Tribunals emphasized once again that there were staff members in all categories and occupational groups who possessed skills and institutional knowledge that rendered them essential for the effective day-to-day functioning of the Tribunals and whose departure could cause disruptions and delays in the trial proceedings. Rather than identifying specific posts, functions or expertise required for the implementation of the completion strategy, the approach taken by the Tribunals is to reduce the total number of posts as the different phases of the strategy are concluded (see para. 3 above). The Advisory Committee notes that the staff unions consider that the application of the retention incentive to a limited number of staff would be divisive and have a detrimental impact on staff morale (see A/62/681, paras. 16 and 17). Accordingly, if adopted, the retention incentive would apply to all staff required to remain with the Tribunals until their services and posts were no longer needed, as set out in the completion strategy and drawdown plans of each Tribunal.

9. The Secretary-General proposes three alternative approaches for the calculation of the amount of the retention incentive on the basis of the application of the termination indemnities set out under the heading "Permanent appointments" in annex III to the Staff Regulations. The situations under which the retention incentive would not be paid are set out in paragraph 31 of the report.

10. The three alternative approaches proposed by the Secretary-General are as follows:

- Option A. The retention incentive would apply to eligible staff having completed at least two years of service with the Tribunals at the time that the incentive is due. The financial implications of this measure are estimated at $11.2 million for the International Criminal Tribunal for Rwanda and $12.1 million for the International Tribunal for the Former Yugoslavia.
- Option B. The retention incentive would apply to eligible staff having completed at least five years of service with the Tribunals at the

time that the incentive is due. The financial implications are estimated at $6.9 million for the International Criminal Tribunal for Rwanda and $7.2 million for the International Tribunal for the Former Yugoslavia.

- Option C. The retention incentive would apply to eligible staff having completed five years of service with the Tribunals and be capped at an amount to be set by the General Assembly, either in terms of a fixed number of months of salary or a fixed incentive payment.

11. In paragraph 8 of its resolution 61/274, the General Assembly requested the International Civil Service Commission to advise it on the proposal of the Secretary-General for a monetary retention incentive (A/61/824), given the possible implications for the United Nations common system, which does not provide for such payments. The Commission indicated that it did not consider special financial retention incentives to be appropriate since there was no provision for their use in the common system and, as such, would constitute a precedent. Instead, the Commission recommended that the existing contractual framework be used to grant contracts that would remove uncertainty with regard to future employment, as follows (A/62/30, para. 21 (b)):

(a) For all staff members occupying key posts, for example, prosecutors, forensic specialists and investigators, fixed-term contracts should be granted that extend for the duration of the mandate of the Tribunals. If turnover was insufficient and staff had to be terminated before the end of the mandate because their skills were no longer needed, staff would be eligible for termination indemnities if they otherwise met the requirement;

(b) For the remainder of the staff, the skills needed through each planned post reduction should be identified and fixed-term contracts offered, consistent with the dates of the planned post reductions.

12. The Tribunals have consistently emphasized that staff members in all categories are essential for the proper functioning of trials and that it was not possible, as recommended by the International Civil Service Commission, to restrict the application of a retention incentive to a narrow definition of "key personnel". Consequently, if the Commission's proposal were adopted, it is likely that the contracts of all remaining staff members would be extended for the duration of the mandate of the Tribunals. They would then become eligible for the payment of a termination indemnity as their posts were abolished, calculated on the basis of the regulations applicable to permanent staff.

13. The Tribunals argue that a high rate of departures could impede their smooth functioning and entail considerable costs for the recruitment and training of new staff. **The Advisory Committee recognizes the critical importance of retaining highly skilled and specialized staff in order to complete all trial proceedings and meet the targets set out in completion strategies of the Tribunals. In view of the consequences of any delays in the completion of the work of the Tribunals, the Committee is of the view that the Tribunals should employ a variety of tools to retain the services of personnel as long as they are needed.** The Committee notes that, according to the Secretary-General, in order to be effective, these should include a monetary retention incentive combined with the non-monetary measures described in his report.

14. In view of the considerations outlined above, the Advisory Committee recommends that the General Assembly authorize, on an exceptional basis, the payment of a retention incentive to staff required to remain with the Tribunals until their services and posts are no longer needed, as set out in the drawdown plans of each Tribunal, on the basis of the criteria described under option C of the report of the Secretary-General, targeting staff with a minimum of five years of service in the Tribunals. It recommends that the amount of the incentive be capped at five months' salary for all staff members, irrespective of the number of years of service at the Tribunals beyond five years. In the present circumstances, the payment of the retention incentive would become effective from the biennium 2008-2009, as from a date to be fixed by the Assembly.

15. The Advisory Committee notes the observation of the International Civil Service Commission that special financial retention incentives for the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia are not appropriate because they are not provided for in the common system and as such would constitute a precedent, which should be avoided. The Committee therefore recommends that, should the General Assembly authorize the payment of a retention incentive, administrative arrangements for such an incentive be based only on an ad hoc decision of the Assembly and not on an amendment to the Staff Rules. The Committee emphasizes that the exceptional nature of such arrangements for the Tribunals would preclude their application elsewhere in the United Nations system.